

Admin.

June 9, 1999

## Memorandum 99-41

### Commission Quorum Issues

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The Commission from time to time experiences quorum problems, attributable to causes such as illness, vacancies, etc. Can our quorum requirement be adjusted as circumstances require?

The general rule, prescribed by statute, is that “words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the Act giving the authority.” See, e.g., Civ. Code § 12; Code Civ. Proc. § 15.

The Commission is composed of ten members, which would ordinarily mandate a quorum of six. However, the statute establishing the Commission’s membership allows for the possibility (and reality) of limited participation by the two legislative members of the Commission. Gov’t Code § 8281. For this reason the Commission has established its quorum at five. *CLRC Handbook of Practices and Procedures* § 2.4.1.

Although the general law is that joint authority given to three or more public officers is given “to a majority of them”, it is not clear whether this means a majority of the total authorized by statute or a majority of the total qualified to act at any given time. May the quorum requirement for the Commission be reduced when there are vacancies on the Commission? At present there are vacancies in three of the seven positions filled by the Governor and one of the two positions filled by the Legislature. In other words, only six of the Commission’s ten positions are filled. Could a quorum of the Commission properly be considered as four in these circumstances?

There are several California cases, going both ways, on the question whether vacancies may reduce a quorum. However, the cases have little relevance for our present purpose since each of them involves a specific statute either requiring a majority of total membership or authorizing action by less than a majority of the total. None of the cases provides an authoritative interpretation of the general quorum statute.

In the absence of clear guidance in the statutes and cases, the staff suggests that we look to accepted rules of parliamentary procedure. The body of rules ordinarily consulted by legislative bodies and committees is *Mason's Manual of Legislative Procedure* (National Conference of State Legislatures 1989). This authority has also been relied on by California courts to help resolve a number of issues involving legislative practice, including quorum issues.

*Mason* offers some helpful guidance:

**Sec. 501. Computing a Quorum**

1. The total membership of a body is to be taken as the basis for computing a quorum, but when there is a vacancy, unless a special provision is applicable, a quorum will consist of the majority of the members remaining qualified.

This proposition is supported by extensive authority cited from a number of jurisdictions.

The staff suggests that the Commission revise its quorum requirement to recognize the existence of vacancies, perhaps enabling us to function better. However, shouldn't there be an irreducible minimum in order to ensure an adequate deliberative process? The staff does not think a quorum of fewer than three Commission members would ever be appropriate.

The staff proposes a revision of the Commission's quorum requirement along the following lines:

**2.4.1. Quorum**

Five members of the Commission constitute a quorum, except that:

(1) If there are three or four vacancies in the membership of the Commission, four members of the Commission constitute a quorum.

(2) If there are five or more vacancies in the membership of the Commission, three members of the Commission constitute a quorum.

If a quorum is established at any time during a meeting of the Commission, the Commission may thereafter act for the duration of the meeting notwithstanding the absence of any member who is part of the quorum. Any action may be taken by a majority of those present after a quorum is established, but any final recommendation to the Legislature must be approved by a minimum of four affirmative votes. The

The Chairperson is authorized to determine that fewer than five the prescribed number of members constitutes a quorum if a

quorum is not otherwise established at a particular meeting and members attending the meeting are entitled to per diem and travel expenses, but in such case the members present act as a subcommittee and no final action may be taken at the meeting. Decisions of a Commission subcommittee may be ratified by the Commission when a quorum is attained, whether at the same meeting or a later meeting.

Respectfully submitted,

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Executive Secretary